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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARKON CHANSAEM,

Defendant.

No. CR 07-435 PJH

**DEFENDANT'S SENTENCING  
MEMORANDUM**

Date: October 10, 2007

Time: 1:30 p.m.

Court: The Honorable Phyllis J.  
Hamilton

**INTRODUCTION**

Mr. Charkon Chansaem, a native and resident of Thailand, was flying through San Francisco airport on his way to work as a janitor for Princess Cruise Lines in Los Angeles, bound for Mexico and Alaska. When he arrived at SFO, due to language difficulties, Mr. Chansaem did not understand that he was expected to collect his luggage and take the luggage through customs prior to boarding the flight for Los Angeles. When Mr. Chansaem did not collect his luggage, U.S. Customs inspected it, and discovered ten CDs containing child pornography. Following his detention, Mr. Chansaem was interviewed at the airport extensively in English, which is not his first or native language. The ensuing "statements" that are the result of that broken-English interview with ICE agents are disputed between the parties, as it is not clear to what extent Mr. Chansaem understood agents' questions and/or properly communicated his answers in English.

1 Mr. Chansaem never *knowingly and intelligently* told interrogating agents that he understood  
2 that child pornography was illegal in the United States or that the images he was carrying were  
3 illegal. The fact of the matter is that he did not. The CDs were placed in his luggage along with  
4 regular belongings, with no attempt made to hide or camouflage them. Moreover, Mr. Chansaem  
5 readily admitted possessing the luggage in question, and cooperated with agents completely by  
6 attempting to answer questions that he thought he understood. There is no indication that Mr.  
7 Chansaem intended to distribute, sell, view, or use the CDs while in the United States or that he was  
8 somehow profiting from distributing child pornography.

9 This is not a case of a high-tech, savvy businessman who is traveling around the world trading,  
10 selling and profiting from the industry of child pornography. This instead is a case of an  
11 unsophisticated immigrant who was essentially raised on a farm, one generation removed from  
12 subsistence rice farming, who passed through the United States en route to a menial job on an  
13 international cruise ship not fully understanding the import of United States law in connection with  
14 this material. In Thailand, such images are readily available for purchase, and although the  
15 government is trying hard to revise cultural acceptance of the child sex trade, there is a far different  
16 perception and understanding overseas about the many dangers associated with child pornography.  
17 As noted by the Probation Officer in her report, "Mr. Charkon has never resided in the United States  
18 and has demonstrated a naivete indicative of a different cultural reference to the crime of child  
19 pornography." PSR ¶ 62. Regardless, the law provides for punishment of individuals in Mr.  
20 Chansaem's position with a five year mandatory minimum sentence. Mr. Chansaem will now pay  
21 dearly for his misunderstanding with five years of his life lost behind bars.

22 Mr. Chansaem now appears before the Court been convicted of one count of transportation of  
23 child pornography, in violation of 18 U.S.C. § 2252(a)(1). Due to the fact that Mr. Chansaem was in  
24 transit at the time the CDs were discovered, the case meets the definition of "transport" under the  
25 statute. All parties agree that the applicable advisory Offense Level Guideline range for Mr.  
26 Chansaem is Offense Level 26, and that the correct criminal history category is I. The Probation

1 Officer has recommended the mandatory minimum sentence of 60 months, which is three months  
2 lower than the range called for in the Plea Agreement that now binds Mr. Chansaem's requested  
3 sentence. In accordance with the boundaries of the plea agreement, as well as the Probation  
4 Officer's recognition of the many mitigating factors at issue in this case, Mr. Chansaem respectfully  
5 requests the Court to impose a low-end sentence of incarceration for 63 months.

#### 6 **STATEMENT OF FACTS**

7 By all accounts, Charkon Chansaem grew up under difficult circumstances. He was born on a  
8 rice farm in rural Thailand to uneducated parents. He and his three siblings worked on the farm  
9 during the rice season, helped to raise chickens and grew vegetables for the family to eat. The rice  
10 they grew was the means of the family's finances; the family used proceeds from rice sales to buy  
11 clothes and medicine. During the off-season, Mr. Chansaem's father worked in construction and his  
12 mother ran the house. The four children attended local, rural elementary school. Although Mr.  
13 Chansaem's older sister Kanya and younger brother Wittaya attended secondary school, Mr.  
14 Chansaem, as the oldest male child, was required to work and delayed secondary school to help  
15 support the family. At 18 years old, Mr. Chansaem was able to attend secondary school as an adult  
16 while his younger brother took over his household duties. At night, Mr. Chansaem worked as a  
17 waiter at a hotel to support his studies and gave his father extra money when he was able to.

18 Ultimately, Mr. Chansaem's older sister died of cancer at age 18 that the family could not  
19 afford to treat. Although the family was eligible for public medical care, the local hospitals did not  
20 have the advanced care necessary to treat her condition. In 1994, Mr. Chansaem's father died of  
21 cancer as well. To try to buy elevated treatment and medicine for his father, the family sold off a  
22 portion of the rice farm. Six months later, the father died and no longer had the same resources to  
23 support the remaining members. Mr. Chansaem then took over the physical labor of running the  
24 farm. Each day before secondary school, Mr. Chansaem ploughed rice and took care of the farm  
25 animals. To this day, Mr. Chansaem's mother, who was 47 when Mr. Chansaem died and is now  
26 60, runs the rice farm with the assistance of Wittaya, who also became ill with a foreign

1 inflammation disease in 1995. As a result of that illness, Wittaya lost a great deal of weight and  
2 strength, and is not able to assist with many of the physical duties that rice farming requires.

3 Eventually, Mr. Chansaem realized that his family was not going to survive on rice farming  
4 alone into the future. He graduated from his adult secondary school and passed an entrance exam to  
5 college, with his mother's encouragement. While working full time, he obtained a bachelor's degree  
6 in Technology and Innovation at the Teachers' College in his rural province of Thailand. He  
7 continued to work after he graduated from college, always returning home during the rainy season to  
8 help his mother with the hard labor of harvesting rice. The assistance Mr. Chansaem provided his  
9 mother was always his first priority, as she counted on him to continue the rice production so the  
10 family would have a product to sell in exchange for cash.

11 Mr. Chansaem learned the limited English that he knows by meeting with missionaries at local  
12 churches every Saturday and Sunday that he was off from work, who offered free classes in English.  
13 While working as a waiter, Mr. Chansaem was exposed to foreigners and longed to communicate  
14 with them, travel and see other countries. He diligently worked to learn and perfect the limited  
15 English that he could learn. This effort paid off in 2003, when Mr. Chansaem interviewed and was  
16 accepted by an agency in Thailand who arranges for temporary work on cruise ships. This  
17 application process thrilled his mother, as the potential pay through an American cruise line was  
18 quadruple the regular income of the family. Although his flat salary was only \$339.00 per month for  
19 ten hours of work, Mr. Chansaem was able to work extra jobs in the laundry and the barber to earn  
20 approximately \$500.00 per month. As an employee on a cruise ship, all of Mr. Chansaem's living  
21 expenses, room and board, health and food costs were paid by the company. As such, the money he  
22 earned with the cruise line was pure profit for his family. His mother, who recognized the possible  
23 benefit to this economic arrangement, borrowed heavily from other family members to pay the  
24 agency for the documents, visas, and insurance necessary for Mr. Chansaem to work internationally.  
25 Although Mr. Chansaem missed his family for ten months of the year, he greatly enjoyed being able  
26 to work and see the world in a manner that was a more efficient and lucrative use of his time.

Each month, Mr. Chansaem sent his mother the money he earned, which was of great benefit to her. \$500.00 a month goes a long way in rural Thailand, and with his salary, Mr. Chansaem's mother was able to fix the house, pay debt, and most importantly, hire laborers to take over the rice planting and harvesting. Sadly, directly before his arrest on the instant offense, Mr. Chansaem had recently been promoted to Assistant Supervisors of Cleaners with Princess Cruise Lines. His guaranteed salary was set at \$860.00 per month, plus tips and part time work. He had been hopeful that he was going to earn approximately \$1,500 per month, which would have allowed his mother to hire more help around the farm, stop laboring, and modernize the house to include electricity and plumbing. Without this money, it is unclear what Mr. Chansaem's mother is going to do over the next five years that Mr. Chansaem must now spend in custody.

## ARGUMENT

### I. UNDER *BOOKER*, A 63 MONTH SENTENCE IS REASONABLE

After *United States v. Booker*, 125 S.Ct 738 (2005), the applicable Sentencing Guideline range of 63-78 months is guiding, but not binding, upon this Court. "A district court must consider the guideline range, but must also consider the other directives set forth in 18 U.S.C. § 3553(a). Thus, under *Booker*, courts must treat the Guidelines as just one of a number of sentencing factors." *United States v. Ranum*, 353 F.Supp. 2d 984, 985 (E.D. Wisc. 2005). Under *Booker*, the United States Sentencing Guidelines are merely "advisory," and sentencing courts are required to consider all of the factors listed in 18 U.S.C. § 3553(a) in imposing sentence. *Booker*, 125 S.Ct. 738, 757 (2005). Significantly, "there is no presumption of *unreasonableness* that attaches to a sentence that varies from the range. A sentence outside the range need only be adequately explained and consistent with § 3553(a) factors." *United States v. Jordan*, 435 F.3d 693, 698 (7th Cir. 2006) (emphasis in original).

The primary directive in § 3553(a) is that the Court must impose a sentence that is "sufficient, but not greater than necessary, to comply with" the purposes of sentencing. See 18 U.S.C. § 3553(a)

1 (emphasis added). Those purposes include the need:

- 2 ● to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment;
- 3 ● to create adequate deterrence;
- 4 ● to protect the public from future crimes of the defendant; and
- to provide the defendant with necessary treatment and training.

5 18 U.S.C. § 3553(a)(2).

6 Section 3553(a) directs sentencing courts to consider a number of additional factors as well, including:

- 7 ● the nature and circumstances of the offense, § 3553(a)(1);
- 8 ● the history and characteristics of the defendant, § 3553(a)(1);
- 9 ● the kinds of sentences available, § 3553(a)(3);
- the sentencing guideline range, § 3553(a)(4);
- pertinent Sentencing Commission policy statements, § 3553(a)(5);
- 10 ● the need to avoid unwarranted sentencing disparities, § 3553(a)(6);
- 11 ● the need to provide restitution to any victims of the offense, § 3553(a)(7).

12 As *Booker* emphasized, under the Sentencing Reform Act, “[n]o limitation shall be placed on  
13 the information concerning the background, character, and conduct of a person convicted of an  
14 offense which a court of the United States may receive and consider for the purpose of imposing an  
15 appropriate sentence.” *Booker*, 125 S.Ct. at 760 (quoting 18 U.S.C. § 3661)(emphasis added). In the  
16 wake of *Booker*, courts are therefore required to consider factors which the guidelines discourage or  
17 reject, such as a defendant’s family circumstances (§ 5H1.6), his drug dependence (§ 5H1.4), and the  
18 age of his prior convictions.

19 To the extent that the sentencing factors that the Court is bound to consider pursuant to 18  
20 U.S.C. § 3553(a) conflict with the Guidelines or the policy statements of the Guidelines, the district  
21 court must, after *Booker*, consider the 3553(a) factors equally with the Guidelines. This result was  
22 forecasted by at least one district court. See *Ranum*, 353 F.Supp.2d at 986:

23 The guidelines prohibition of considering these factors [age, mental and  
24 emotional condition, physical condition including drug or alcohol  
25 dependence, employment record, family ties or responsibilities, socio-  
26 economic status, civic contributions, lack of guidance as a youth] cannot  
be squared with the § 3553(a)(1) requirement that the court evaluate the  
“history and characteristics” of the defendant. . . thus, in cases in which a

1 defendant's history and character are positive, consideration of all the  
2 3553(a) factors may call for a sentence outside of the Guideline range.

3 Further, § 3553(a)(2)(D) requires a sentencing court to evaluate the need to  
4 provide the defendant with education, training, treatment, or medical care in the  
5 most effective manner. This directive might conflict with the guidelines, which in  
6 many cases offer only prison. *See* U.S.S.G. 5C1.1. ("In some cases, a defendant's  
7 educational, treatment, or medical needs may be better served by a sentence which  
8 permits the offender to remain in the community.")

9 *Id.* at 986; *see also United States v. Myers*, 353 F.Supp.2d 1026, 1029 (S.D. Iowa 2005)(stating  
10 that "the work of a sentencing court, then, is to evaluate all the interest, as represented by the  
11 statutory factors, through careful and patient attention to all parties involved.") Once the Court  
12 determines and considers the advisory Guideline range, this Court must then equally evaluate the  
13 factors enunciated under Title 18, Section 3553(a) to determine a just and appropriate sentence.

14 In the case of Mr. Chansaem, a low-end sentence of 63 months is appropriate. Prior to the days  
15 of *Booker*, the Ninth Circuit has long recognized that a "combination of factors" could together  
16 constitute a mitigating circumstance justifying a low-end sentence. *See United States v. Cook*, 938  
17 F.2d 149 (9th Cir. 1991). In *Cook*, the Court explained that "[t]here is not reason to be so literal-  
18 minded as to hold that a combination of factors cannot together constitute a 'mitigating  
19 circumstance.'" *Id.* at 153. Although the court no longer speaks in the language of "departures," the  
20 mitigating factors in Mr. Chansaem' favor, considered under the terms of 18 U.S.C. § 3553,  
21 demonstrate that a 63 month sentence is the sentence "no greater than necessary" to fulfil the goals of  
22 sentencing enunciated by Congress. Each of the relevant 3553 factors is discussed below, in turn.

#### 23 **A. The Nature and Circumstances of the Offense, § 3553(a)(1)**

24 Mr. Chansaem is being punished for a serious offense – transportation of child  
25 pornography. However, as explained above, the circumstances surrounding Mr. Chansaem's  
26 purchase of the pornography and his arrival to the United States mitigate the offense significantly.  
Specifically, Mr. Chansaem was openly carrying child pornography in his suitcase because he did not  
understand that such material was contraband in the United States, which was the gateway country



1 for his employment. He purchased the pornography on a street corner in Thailand in an area where  
 2 such images readily available, and there is no evidence that he was intending to sell or profit from the  
 3 pornography. Instead, the evidence before the Court indicates that this offense occurred largely out  
 4 of ignorance on the part of Mr. Chansaem that such images are, in fact, contraband. The case has  
 5 opened Mr. Chansaem's eyes about the dangers and ills of child pornography, and he will have five  
 6 years in custody to reinforce that understanding. Given that this offense is Mr. Charkon's first and  
 7 he does not bear the hallmarks of a pedophile or widespread distributor of child pornography, a five  
 8 year, three months sentence is appropriate.

9 **B. The History and Characteristics of the Defendant, § 3553(a)(1)**

10 **1. Mr. Chansaem Has Faced Obstacles as a Youth, Has No Criminal History,**  
 11 **and is the Major Source of Support for an Aging Mother and an Infirm**  
**Brother**

12 Mr. Chansaem is the son of peasant farmers in Thailand. His older sister and father are  
 13 deceased, and his aging mother depends on him as a source of support. His cruise ship occupation  
 14 was entirely geared toward providing money necessary to support his mother and brother. For the  
 15 entire five years he will be incarcerated, his mother and brother will have lost the income that they  
 16 now depend on. Mr. Chansaem is eager to return to work and to again support his family; a sentence  
 17 longer than five years, three months will be a greater hardship on his relations in Thailand each  
 18 passing year. He is essentially alone and unsupported in the United States, and now will spend over  
 19 five years in jails without seeing a family member or friend. Mr. Chansaem is not an individual with  
 20 a history of a life of crime, or who works or profits from the child sex industry. He is a simple  
 21 person who has worked hard under difficult conditions his entire life. He made an egregious mistake  
 22 in judgment when he purchased the CDs at issue, but there is no indication in the record that Mr.  
 23 Chansaem has not learned from this mistake, or that he cannot be a productive and law-abiding  
 24 member of society.

25 Moreover, although Mr. Chansaem is educated, he is unsophisticated and unworldly. He is  
 26 young, with limited English speaking ability and has had minimal exposure the laws, practices,



1 political movements, and cultural norms of the United States. As noted by the Probation Officer,  
2 different countries have different cultural understandings and norms related to contraband such as  
3 child pornography. A quick walk down the streets of the Patpong district of Bangkok reveals no  
4 dearth of a variety of pornographic materials; adult, child, and gay pornography is often sold, and as  
5 of 2001 (when undersigned counsel was last in Thailand) there did not appear to be a great deal of  
6 discrimination between the types on streetcorner carts. Although it is no excuse for the crime at  
7 hand, it is important to consider Mr. Chansaem's actions against this reference point, and for the  
8 Court to recognize that the Probation Officer is insightful and correct for picking up on Mr.  
9 Chansaem's naivete regarding the ills of child pornography. In this vein, knowledge coupled with  
10 the prison sentence recommended by the Probation Officer is sufficient, but no greater than  
11 necessary, to get the message across to an individual of limited education such as Mr. Chansaem.  
12 Quite simply, now that he understands the significance of child pornography, Mr. Chansaem will not  
13 repeat his actions here.

14                   2.       **A Five Year, Three Month Sentence is Sufficient for the Purposes of**  
15                   **Detering Mr. Chansaem**

16               Mr. Chansaem has shown that he is a hard worker and lives a responsible life working  
17 for and worrying about others. His decision to purchase and travel with child pornography was a  
18 life-altering, terrible decision with years of consequences. One moment, he was on his way to work  
19 a third year on a cruise ship with a new promotion, a higher salary, and a better way to support his  
20 family. The next minute, he found himself in the administrative segregation unit of the Santa Rita  
21 jail, due to his small size and the nature of these charges. There, he was informed that in the United  
22 States, carrying CDs of this nature carry a five year mandatory minimum penalty that is impossible to  
23 surmount. It is not difficult, under these circumstances, to understand that this case has truly  
24 influenced Mr. Chansaem to stay far away from child pornography in the future. In reality, it would  
25 take a far lower sentence than five years in custody to ensure that Mr. Chansaem is deterred from the  
26 purchase of child pornography. Moreover, given the fact that Mr. Chansaem has spent his entire life

1 either working, studying, or learning English, he shows great promise for leading a law-abiding life  
2 in the future. There is no indication in the record that Mr. Chansaem will re-offend at the  
3 conclusion of a five year, three month custody term. A low-end sentence is accordingly requested.

4  
5 **CONCLUSION**

6 For the aforementioned reasons, Mr. Charkon Chansaem respectfully requests this Court to  
7 sentence him to a low end sentence of 63 months, which is a sentence no greater than necessary that  
8 adequately meet the requirements for sentence articulated in 18 U.S.C. § 3553.

9 DATED: October 2, 2007

10 Respectfully submitted,

11 BARRY J. PORTMAN  
12 Federal Public Defender

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